



INTERIOR BOARD OF INDIAN APPEALS

Keith Mandan v. Acting Great Plains Regional Director, Bureau of Indian Affairs

40 IBIA 206 (01/10/2005)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

KEITH MANDAN,	:	Order Affirming Decision
Appellant,	:	
	:	
v.	:	
	:	Docket No. IBIA 03-13-A
ACTING GREAT PLAINS REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee.	:	January 10, 2005

This is an appeal from an August 29, 2002, decision of the Acting Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the claim of Appellant Keith Mandan to owner's use of Fort Berthold Allotments 122, 1183, 1570-A, and 3047 for grazing purposes. The Regional Director concluded that Appellant was not exempt from grazing permit and rental fee requirements for these allotments. 1/ For the reasons discussed below, the Board affirms the Regional Director's decision.

Appellant's notice of appeal stated in its entirety:

I am hereby appealing the August 29, 2002 decision of [the] Regional Director. This decision regards Owners Use status for Allotments 122, 1570-A[,] 1183 and 3047 in Range Units 13 and 209. (See Attached decision letter.)

I am representing myself in this appeal. I am an enrolled member of the Hidatsa, Mandan, Arikara Tribe and am requesting the assistance of the Regional Office in the preparation of the Appeal and service to interested parties.

Appellant attached to his notice of appeal the statement of reasons he had filed with the Regional Director during his initial appeal in this matter from a decision of the Superintendent, Fort Berthold Agency, BIA.

1/ Appellant owns fractional interests in the four allotments. The record shows that he owns 12/420 interests in Allotments 122, 1183, and 1570. It does not show his ownership interest in Allotment 3047. It is not clear whether Allotment 1570 is the same as Allotment 1570-A.

The Board required Appellant to serve his notice of appeal on the interested parties but advised him that he could request assistance from the Regional Director in serving briefs during further proceedings in the appeal. Appellant completed service of his notice of appeal.

The Board then docketed this appeal and established a briefing schedule, stating: “The filing of an opening brief is not required under the Board’s regulations, and Appellant may choose to rely upon the materials in the record and the notice of appeal. Appellant is, however, advised that he bears the burden of proving the error in the decision being appealed.”

Appellant did not file an opening brief. After Appellant’s time for filing an opening brief expired, the Regional Director filed an answer brief. Appellant did not file a reply brief.

Appellant evidently intended to rely on his statement of reasons before the Regional Director. However, the Regional Director’s decision addressed the arguments Appellant made in his statement of reasons, and Appellant fails to allege, let alone show, how the Regional Director erred in addressing them.

The Board addressed a similar situation in Concho Cattle Company v. Acting Anadarko Area Director, 31 IBIA 97, 98 (1997), where the Board stated:

By simply refileing the same Statement of Reasons it filed with the Area Director and failing even to allege error in the Area Director's responses to its contentions, let alone support those allegations, Appellant has failed to carry its burden of proof here. E.g., Trevino v. Anadarko Area Director, 28 IBIA 129 (1995); Fort McDermitt Paiute-Shoshone Tribe v. Acting Phoenix Area Director, 27 IBIA 162 (1995), and cases cited therein.

For the same reason, the Board finds that Appellant has failed to carry his burden of proof in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director’s decision is affirmed.

// original signed
Anita Vogt
Senior Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge